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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/709,694      | 11/10/2000  | Kenneth A. Sumrall   | 067681.0103         | 4625             |

7590 09/20/2002  
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EXAMINER

CHRISTMAN, KATHLEEN M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3713

DATE MAILED: 09/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/709,694

Applicant(s)

SUMRALL ET AL.

Examiner

Kathleen M Christman

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 1-22 and 47-79 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

In response to election filed 08/09/02, claims 1-79 are pending.

#### *Election/Restrictions*

1. Applicant's election without traverse of Group III claims 23-46 in Paper No. 5 is acknowledged.
2. Claims 1-22 and 47-79 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5. The requirement for election is deemed proper and therefore made **FINAL**.

#### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 23-41 and 43-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al (US 6064856). Regarding claim 23, the method steps of associating the learning activity with at least one student; receiving a release instruction for the learning activity; and providing access to the learning

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activity for the student associated with the learning activity, is corresponds to Lee et al's description of assigning lesson segments, see col. 5: 27-37. The assessment procedure, as is claim 24, is referred to as a "quiz subroutine" by Lee et al and is described in col. 7: 10-18. Regarding claim 26, the questions of the quiz are associated with a "particular lesson segment" and further described as having the ability to test the student's comprehension of the learning material. Having a student comprehend the learning material presented to them is an inherent objective of the teaching process. The mastery level, as in claim 27, is described by Lee et al as a "threshold" value and is taught at col. 7: 32-35 and col. 10: 1-5. The learning activities include procedures; these procedures may include either assessment procedures of content procedures, as in claims 29 and 30, see col. 4: 22-39. Regarding claims 25 and 28, Lee et al teaches the use of color-coding in col. 10: 26-32.

Claims 31-38 are a system corresponding in scope to claims 23-30, respectively, and are rejected for the same reasons. The elements of claims 39-41 and 43-45 have been addressed above, and are rejected for the same reasons.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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7. Claims 42 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (US 6064856) in view of Oh (US 6190178 B1). Lee et al teaches all aspects of the claimed invention as shown above except for "accessing the learning activity through a device comprising no system-specific software or hardware, the device operable to display Hypertext Markup language (HTML)".

Oh clearly shows this limitation. In fact the Oh patent is designed to specifically provide this type of system. Although Oh does not specifically mention HTML it is old and well known that web pages are commonly written in HTML. It would have been obvious to one of ordinary skill in the art to implement the Lee et al system on the Oh system so as to increase the ability for user to conveniently use the system.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Lee et al (US 5788508, US 5441415, US 5267865) patents related to the Lee et al patent referenced above

b. Ho et al (US 6118973) a training system which includes the mastery levels, testing and delivering of educational content to a user

c. Pellegrino et al (US 6149441) teaches a system for authoring a learning program including the use of web-pages

d. Aggarwal et al (US 6381444 B1) teaches a system for providing educational content, where the user station receives an actual decryption key to allow access to the educational content

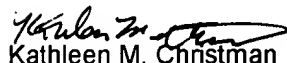
e. Sonnenfeld (US 6112049) teaches a system and method for authoring network based testing

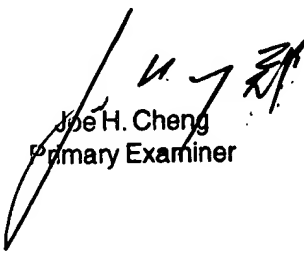
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (703) 308-6374. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (703) 308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Kathleen M. Christman  
Patent Examiner  
September 12, 2002

  
Joe H. Cheng  
Primary Examiner